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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

MARGARET GRANGER,

Defendant and Appellant.

E069355

(Super.Ct.No. FCH1200495)

OPINION

APPEAL from the Superior Court of San Bernardino County. Bridgid M. McCann, Judge. Affirmed with directions.

Steven S. Lubliner, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Michael Pulos and Michael D. Butera, Deputy Attorneys General, for Plaintiff and Respondent.

# I

## INTRODUCTION

Defendant and appellant Margaret Granger was an active participant in a criminal scheme involving fraudulent property loan transactions. Pursuant to a plea agreement, defendant pled guilty to two counts of conspiracy to commit grand theft (Pen. Code,<sup>1</sup> §§ 182, 487, subd. (a); counts 1 & 43). Defendant also admitted that in the commission of both counts, she committed two or more fraud-related felonies which involved the taking of more than \$500,000 in violation of section 186.11, subdivision (a)(2). In return, the remaining allegations were dismissed and defendant was placed on formal probation for a period of three years on various terms and conditions of probation. The court reserved judgment on the issue of restitution to determine the amount owed to each victim.

On appeal, defendant argues the order for restitution and abstract of judgment for victim restitution in favor of William M. must be vacated because the trial court never ordered restitution payable to him. The People respond that the abstract of judgment and the June 15, 2012 probation order must be corrected but disagree that the abstract of judgment must be vacated. Defendant also asserts that the trial court erred in denying her section 1203.4 motion for dismissal, even if she had not fully paid victim restitution, because she had otherwise complied with the terms of her probation. We direct the

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<sup>1</sup> All future statutory references are to the Penal Code unless otherwise stated.

superior court clerk to correct the abstract of judgment and the June 15, 2012 probation order. We reject defendant's remaining contention and affirm the judgment.

## II

### FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>

Defendant was employed at an escrow office as an escrow officer and notary. Between 2006 and 2009, defendant, along with three other persons, engaged in a real estate fraud scheme during which they conspired to commit identity theft, forgery, and other felonies. They used ““straw buyers”” to purchase seven residential properties and used some victims' identities to purchase real estate without their knowledge. Lenders were given false information which they relied on in approving respective loans. Included in these schemes were false documents which defendant unlawfully notarized, recorded at the county recorder's office, and sent to lenders. Defendant also received escrow and notary fees for the fraudulent transactions.

On September 14, 2011, the San Diego County District Attorney's office filed a 45-count consolidated amended information charging defendant and three codefendants with various crimes. Defendant was charged in 30 of these counts, which alleged multiple instances of conspiracy to commit grand theft (§§ 182, subd. (a)(1), 487, subd. (a)), filing a false instrument (§ 115, subd. (a)), forgery of documents (§ 470, subd. (d)), use of personal identifying information of another (§ 530.5, subd. (a)), and grand theft of personal property (§ 487, subd. (a)). The amended information also

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<sup>2</sup> The factual background is taken from the probation report.

alleged in all counts that defendant committed two or more fraud-related felonies which involved the taking of more than \$500,000 in violation of section 186.11, subdivision (a)(2).

On November 4, 2011, defendant pled guilty to counts 1 and 43, and admitted the enhancement allegation attached to both counts. In exchange, defendant was promised formal probation and dismissal of the remaining charges against her. Defendant also agreed to pay victim restitution.

Defendant was sentenced on June 15, 2012. In accordance with the plea agreement, the San Diego County Superior Court suspended sentence and placed defendant on formal probation for a period of three years on various terms and conditions of probation. In both its oral pronouncement and its written minutes, the court indicated it would reserve judgment on the issue of victim restitution until a later hearing was set to determine the amount owed to each victim. At that time, the court noted that it did not see William M. as a victim, even though he had characterized himself as a victim to the probation department, and that if he came in seeking restitution, the court would not award restitution to him. Nonetheless, section (2)(t) of the June 15, 2012 signed order granting formal probation included restitution awards, as proposed in the probation report, to four individuals: Kunal S. in the amount of \$30,716.25; Charles P. in the amount of \$575,000; John B. in the amount of \$260,000; and William M. in the amount of \$250,000.

On April 12, 2012, the People filed a supplemental sentencing memorandum, requesting defendant pay restitution to J.P. Morgan Chase Bank (Chase), Accredited Home Lenders, Inc. (AHLI), Just Mortgage, Inc., and Innovative Mortgage Capital.

On August 17, 2012, the San Diego County Superior Court held a contested victim restitution hearing with defendant present. At that time, the parties discussed victim restitution to the entities listed in the People's supplemental sentencing memorandum. Defense counsel argued that the entities were not direct victims, and that the companies "made monies off of these transactions because they just moved them to another entity." The court disagreed, noting it could not disregard the guilty plea. Defense counsel acknowledged that "there was fraudulent activity" in this case but that there were "dramatic disparities in the relative activities of the [defendants] that are charged."

Following further discussion, defense counsel stated, "so I guess the suggestion was that you're going to award restitution to those companies" and "it's incumbent upon those companies to go make a claim and try to prove it up. So we're going to be litigating that forever, if anybody wants to come in." The prosecutor responded that "the way it [actually] works, is that, if the Court orders restitution in this case, we give the victim what's called a CR-110 [Order for Restitution and Abstract of Judgment]. It then is up to them—that's the civil judgment based on the Court's order. It's then up to them to try to claim, or not, if there's any assets. . . . I think that's going to be used up fairly quickly. Then they're trying to go against [defendant] for any assets or whatever that she has. So, at that point, we, as a criminal court, are out of it." The court inquired, "But you

have to give it to them in the first instance. You have to be able to give it.” The prosecutor responded, “Yes, exactly. So we have to have a point of contact to give it to them.” The prosecutor further explained, “Your Honor, at that point, we’re out of it, because we’re the criminal court. So we give it to them. It’s a civil judgment. However they go about collecting it is not something that goes through the DA’s office.”

After further discussions on the issue of who the actual victims were in this case, and whether they suffered losses, the parties agreed that AHLI lost \$247,412.91. The trial court then issued victim restitution to AHLI in the amount of \$247,412.91. As to the remaining entities, the court, at that point, was unable to determine the amount due in restitution and reserved jurisdiction over the issue of restitution.

Thereafter, on October 1, 2012, defendant’s probation supervision was transferred from San Diego County to San Bernardino County. On November 21, 2012, the San Bernardino County Superior Court accepted jurisdiction over defendant pursuant to section 1203.9.

On January 29, 2013, the San Bernardino County Superior Court held a modification of probation hearing. At that time, the court modified defendant’s probationary conditions and noted that the court retained jurisdiction on the issue of victim restitution.

The probation report prepared by the San Bernardino County Probation Department stated that defendant's probationary terms included payment of \$250,000 to William M., payment of the nearly \$860,000 to three other individuals, and payment to AHLI and other entitles of an amount to be determined.

On March 1, 2013, the San Bernardino Superior Court held a restitution hearing. Defendant objected to the victim restitution amount owed to the others with the exception of AHLI. The court determined that defendant's liability for victim restitution was limited to the \$247,412.91 ordered to AHLI. The court ordered defendant to pay \$50 per month toward this amount and made clear that defendant's restitution obligations would not be discharged upon termination of her probation.

On September 26, 2013, William M. successfully applied for an order for restitution and abstract of judgment (Judicial Council Forms, form CR-110/JV-790) (hereafter Form CR-110) for victim restitution from the San Bernardino County Superior Court clerk. The abstract of judgment portion of Form CR-110 noted William M. as the judgment creditor with the judgment entered on March 1, 2013. Defendant did not appeal from that order or file a motion to set aside Form CR-110.

On December 22, 2014, during a hearing on defendant's request for early discharge from probation, defendant sought to vacate the judgment for victim restitution in William M.'s favor because restitution had been ordered only to victim AHLI. The court ordered a supplemental probation report on William M.'s entitlement to restitution

and set a follow-up hearing to address the issues of early termination of probation and restitution.

The San Bernardino County Probation Department filed a supplemental report recommending against early termination of probation on the basis of defendant's outstanding restitution balance. The report noted that, during her period of supervision in San Bernardino County, defendant had paid only \$950 towards her restitution obligation. This supplemental probation report relied on the prior probation report to conclude defendant owed approximately \$1.4 million in victim restitution, rather than the \$247,412.91 actually ordered to AHLI.

At a hearing held on January 12, 2015, defendant argued that she did not owe \$1.4 million in victim restitution, but conceded that she owed approximately \$247,000 in unpaid restitution. The trial court denied defendant's motion for early termination of probation and informed defendant to renew her section 1203.4 motion for dismissal when her probation period expired.

On August 15, 2017, defendant appeared before the trial court to address the issue of victim restitution. Defendant explained that victim restitution of \$247,412.91 had been ordered to AHLI, not William M., and that AHLI no longer existed. The court agreed that restitution appeared to be ordered only to AHLI. The court further noted that the restitution amounts in the transfer order were inconsistent with the original order of victim restitution, which stated that AHLI was the only victim entitled to restitution. The



court continued the matter to allow the People to investigate the issue and to address whether the judgment was correct.

On September 25, 2017, the trial court held a follow-up hearing before a different judge. The court initially mistook the nature of the claim as an attempt by defendant to untimely oppose the original victim restitution order. However the court ordered a transcript of the March 1, 2013 hearing and reset the matter to October 18, 2017.

At the October 18, 2017 hearing, the trial court stated that it had reviewed the transcript of the March 1, 2013 hearing, which confirmed defendant was ordered to pay \$247,412.91 to AHLI in victim restitution. The court also noted that it would continue that restitution “order in place.” Defendant explained that the restitution was not ordered to William M., and that the abstract of judgment in his favor was not valid. The court took no position on that issue and admitted it did not know how he had obtained an abstract when the March 1, 2013 restitution order had awarded victim restitution only to AHLI. The court also denied defendant’s motion for dismissal under section 1203.4 on the basis that defendant had not completed payment of victim restitution to AHLI.

On October 19, 2017, defendant filed a timely notice of appeal.

### III

#### DISCUSSION

##### A. *Abstract of Judgment*

While noting that this court may correct clerical errors in an abstract of judgment at any time, defendant argues, without citation to authority, that “more is required than a

clerical correction” in this case. Defendant contends that because the trial court never entered an order for victim restitution in favor of William M., this court should vacate or strike Form CR-110.

Initially, we note that the error in Form CR-110 does not appear to be a “clerical error,” but instead was erroneously obtained by William M. in his name only. As such, we agree with the parties that Form CR-110 should be corrected to reflect the trial court’s oral pronouncement of judgment. (See *People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2; *People v. Mitchell* (2001) 26 Cal.4th 181, 185; *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1345.) Here, the record is clear that the trial court ordered defendant to pay victim restitution in the amount of \$247,412.91 to AHLI, and not William M.

We, however, disagree with defendant that Form CR-110 should be vacated or stricken. Defendant was present at the August 17, 2012 contested restitution hearing where the prosecutor explained how Form CR-110 is obtained. Although it appears that William M. obtained Form CR-110 in his name erroneously in September 2013, the record, nonetheless, shows that defendant never appealed from that order or filed a petition to vacate that order. Defendant is appealing from the trial court’s October 18, 2017 order denying her section 1203.4 motion for dismissal. The trial court’s October 18, 2017 order took no position on the legality or enforceability of the abstract of judgment in favor of William M.

Unfortunately, at this stage in the proceedings, this court cannot vacate or strike Form CR-110. Nonetheless, under the circumstances of this case, we direct the clerk of the superior court to amend Form CR-110 to accurately reflect the trial court's oral pronouncement of judgment.<sup>3</sup>

The People assert that this court should also correct the June 15, 2012 probation order, which erroneously listed William M. and other individuals as victims to defendant's offenses. Defendant agrees that the June 15, 2012 probation order should be corrected to avoid further confusion. We find that once the matter was transferred to San Bernardino County, the San Bernardino County Superior Court modified defendant's probationary conditions, and the San Bernardino County Superior Court reaffirmed the restitution order to AHLI, the June 15, 2012 probation order was no longer valid. Nevertheless, out of an abundance of caution and to avoid future confusion, we will direct the superior court clerk to amend the June 15, 2012 probation order to reflect that victim restitution was awarded to AHLI in the amount of \$247,412.91.

B. *Motion to Dismiss*

Defendant contends that a motion for dismissal under section 1203.4 may be granted even if a defendant has not fully paid victim restitution. Therefore, the matter should be remanded to allow the trial court to review whether defendant had otherwise complied with the terms of her probation.

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<sup>3</sup> We note that the correction of Form CR-110 will have a similar effect as vacating Form CR-110 since it will prevent William M. from attempting to collect from defendant in civil court.

“There are three circumstances in which a defendant may apply for relief under . . . section 1203.4: if, ‘(a) he [or she] has fulfilled the conditions of his [or her] probation for the entire period; (b) he [or she] has been discharged before the termination of the period of probation; or, (c) in any case in which a court, in its discretion and the interests of justice, determines he [or she] should be granted relief.’ [Citation.] [¶] Under either of the first two scenarios, the defendant is entitled as a matter of right to the dismissal of the charge. [Citations.]” (*People v. Guillen* (2013) 218 Cal.App.4th 975, 991 (*Guillen*).) Under the third scenario, the trial court exercises its discretion whether to grant relief in the interests of justice. (*People v. McLernon* (2009) 174 Cal.App.4th 569, 574.)

Our review of the trial court’s order denying the petition involves an interpretation of section 1203.4, subdivision (a). As such, it presents an issue of law for our independent review. (*People v. Seymour* (2015) 239 Cal.App.4th 1418, 1428 (*Seymour*).)

“‘The expunging of the record of conviction [under section 1203.4] is, in essence, a form of legislatively authorized certification of complete rehabilitation based on a prescribed showing of exemplary conduct during the entire period of probation.’” (*People v. Chandler* (1988) 203 Cal.App.3d 782, 788-789 (*Chandler*).) “‘When such an order has been entered there is no further criminal prosecution pending against the defendant. He [or she] has then, without any further showing of rehabilitation on his [or her] part, received a statutory rehabilitation and a reinstatement to his [or her] former status in society insofar as the state by legislation is able to do so.’” (*Id.* at p. 787.)

Under the first scenario—which is the scenario under which defendant sought relief—a defendant who has “‘fulfilled the conditions of probation for the entire probationary period’ . . . ‘is entitled as a matter of right to have the plea or verdict of guilty changed to one of not guilty, to have the proceedings expunged from the record, and to have the accusations dismissed.’” (*People v. Covington* (2000) 82 Cal.App.4th 1263, 1266 (*Covington*); see *People v. Hawley* (1991) 228 Cal.App.3d 247, 249-250; *People v. Bradus* (2007) 149 Cal.App.4th 636, 641.)

In *Covington, supra*, 82 Cal.App.4th 1263, the defendant was placed on probation and ordered to pay \$99,473.48 in restitution to her former employer following her conviction on four counts of grand theft and one count of forgery. (*Id.* at p. 1265.) She had an unpaid balance of about \$88,000 two months before her term of probation was to end. (*Ibid.*) After her probation was successfully terminated, she filed a section 1203.4 petition asserting she had complied with all of her probation conditions. (*Ibid.*) The trial court denied her petition on the ground she had not finished paying the full restitution amount. (*Ibid.*) On appeal, she acknowledged she had not yet paid the full amount but stated she was still entitled to relief because she had complied with the probation conditions by making all court-ordered payments during the probationary period. (*Id.* at p. 1266.) The Court of Appeal disagreed, holding that, “for purposes of section 1203.4, a defendant has not fulfilled a restitution condition of probation unless he or she has made all court-ordered payments ‘for the entire period of probation’ and has paid his or her obligation in full.” (*Id.* at p. 1271, italics omitted.) Noting that restitution not only

makes the victim whole but also ““serves valid, punitive, deterrent, and rehabilitative objectives by . . . helping him [or her] appreciate the harm done to the victim,”” the Court of Appeal concluded that the rehabilitative purposes of probation and the constitutional right<sup>4</sup> of a victim to restitution “would be ill served if the defendant could have his or her conviction expunged without having made up for the victim’s losses.” (*Id.* at p. 1270.)

*Covington* is directly on-point to this case. It is undisputed here that, as a condition of probation, the trial court ordered defendant to pay victim restitution in the amount of \$247,412.91. It is further uncontested that defendant had not paid this amount and that the record reflects only \$950 paid towards this obligation. Defendant had a large outstanding balance of victim restitution owed, and there is no indication in the record to show that defendant had attempted to fulfill her obligation. Although the record indicates that the parties had discussed the question of whether AHLI still existed as a corporate entity during the contested restitution hearing held in August 2012, and at subsequent hearings, defendant did not pursue this issue in seeking her section 1203.4 relief. Hence, the trial court’s October 18, 2017 order denying defendant’s section 1203.4 motion to dismiss did not resolve the factual issue of AHLI’s solvency or the existence of

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<sup>4</sup> Victims of crime have a constitutional right to restitution under article I, section 28, subdivision (b), to the California Constitution, which provides that “[i]n order to preserve and protect a victim’s rights to justice and due process, a victim shall be entitled . . . . [¶] . . . [¶] (13) To restitution. [¶] (A) It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer. [¶] (B) Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.”

individuals entitled to recover restitution on its behalf. Accordingly, this factual determination cannot be resolved in the first instance on appeal. (See, e.g., *Redevelopment Agency v. Superior Court* (1991) 228 Cal.App.3d 1487, 1498, fn. 6 [declining to resolve factual dispute on appeal and holding that the trial court is far better suited to do so].) The record contains no documentation of any restitution payments made between December 2014 and June 2015. Relief is mandatory in this case only if the defendant “has fulfilled the conditions of probation for the entire period of probation.” (§ 1203.4, subd. (a)(1).) Defendant did not fulfill her victim restitution obligation for the entire period of probation.

Defendant acknowledges that the issue she raises on appeal has been addressed by prior appellate court decisions but believes “case law is split in this area.” Contrary to defendant’s characterization, there is no split of authority. Numerous cases directly interpreting section 1203.4 motions after a defendant had completed his or her probation for the entire period have consistently held that defendants who had not fully paid the restitution ordered had not fulfilled the conditions of their probation, and therefore, were not entitled to section 1203.4 relief. (See *Seymour, supra*, 239 Cal.App.4th at p. 1430 [appellate court held that a defendant cannot be deemed to have complied with all probation terms if an outstanding balance of victim restitution remains]; *People v. Johnson* (2012) 211 Cal.App.4th 252, 261 (*Johnson*) [“a defendant who fails to make all court-ordered restitution payments during the entire period of probation fails to meet the requirement of full compliance and is not entitled to relief under Penal Code

section 1203.4, even if the violation does not result in revocation”]; *Covington, supra*, 82 Cal.App.4th at pp. 1269-1270 [compliance with a victim restitution probation condition requires that the defendant both: (1) “make all court-ordered restitution payments during ‘the entire period of probation’ insofar as he or she has the ability to do so” and (2) “pay the full amount of the victim’s losses as determined by the court”]; *Chandler, supra*, 203 Cal.App.3d at pp. 787, 789 [rejecting the defendant’s argument that he had fully complied with the terms of his probation for purposes of section 1203.4, despite paying only \$340 toward the court-ordered restitution amount of \$2,571.65]; *People v. Butler* (1980) 105 Cal.App.3d 585, 587 (*Butler*) [“Butler does not contend he fulfilled all the conditions of his probation. One of the conditions required him to pay \$2,500 in restitution to the victim of his grand theft within four years. Within that four-year period, he paid only \$530”].) We find these authorities well-reasoned. Likewise, since defendant failed to pay victim restitution in full, the trial court did not err in denying defendant section 1203.4 relief.

Furthermore, this case does not involve the second scenario, where probation is terminated early. The text of section 1203.4 does not condition mandatory relief in this scenario on completing all of the terms of probation, instead mandating relief whenever the defendant “has been discharged prior to the termination of the period of probation.” (§ 1203.4, subd. (a)(1).) Also, completing all of the terms of probation is not necessary for early termination, as “[t]he court may at any time when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on



probation shall warrant it, terminate the period of probation, and discharge the person so held.” (§ 1203.3, subd. (a).)

Defendant argues that the “different treatment” of victim restitution under section 1203.4, subdivision (a), “makes little sense.” We find defendant’s contention unavailing. Prior case law had addressed this distinction, and apparently rejected it. (See, e.g., *Guillen*, *supra*, 218 Cal.App.4th at pp. 991-992; *Butler*, *supra*, 105 Cal.App.3d at p. 587; *Chandler*, *supra*, 203 Cal.App.3d at p. 788.) Defendant’s case falls under the first scenario because her probation expired naturally. Thus, she is entitled as a matter of right to dismissal of the action upon a showing she has fulfilled the conditions of probation. (*Guillen*, at p. 991.) “Any violation of any of the probationary terms will disqualify a probationer from seeking dismissal under the first scenario.” (*Ibid.*)

The plain meaning of section 1203.4 indicates that where a defendant is granted early discharge from probation due to good conduct and reform, he or she is entitled to section 1203.4 relief as a matter of right. If, however, a defendant completes the supervision period without being granted early discharge for good conduct, the text of the statute requires that he or she fulfill the conditions of probation in order to receive comparable relief. (See *Johnson*, *supra*, 211 Cal.App.4th at pp. 261-262 [“[section 1203.4] rewards those who comply with their terms of probation or are relieved from compliance”].)

We also reject defendant's assertion that denying section 1203.4 relief for failure to fully satisfy a victim restitution order creates an inequity between equally culpable individuals because some victims choose not to seek restitution. Defendant's claim has no bearing on the statutory interpretation of section 1203.4. In addition, a victim's right to restitution is constitutional; it cannot be bargained away by the People and must be included in the court's sentence unless compelling and extraordinary reasons exist to the contrary. (*People v. Brown* (2007) 147 Cal.App.4th 1213, 1225-1226 ["Victim restitution may not be bargained away by the People"]; *People v. Valdez* (1994) 24 Cal.App.4th 1194, 1202-1203 [same].) Furthermore, "[a] sentence without an award of victim restitution is invalid." (*Brown*, at p. 1225; *People v. Bernal* (2002) 101 Cal.App.4th 155, 164-165; *People v. Rowland* (1997) 51 Cal.App.4th 1745, 1750-1752.) Moreover, probation is not a right but a privilege, and an act of leniency that allows a defendant to avoid imprisonment. (*People v. Moran* (2016) 1 Cal.5th 398, 402.) "If a defendant believes the conditions of probation are more onerous than the potential sentence, he or she may refuse probation and choose to serve the sentence. [Citation.]" (*People v. Olguin* (2008) 45 Cal.4th 375, 379.) Therefore, even presuming a different perpetrator of criminal fraud could escape restitution obligations where their victim does not cooperate with the probation department to establish an amount of financial harm, this fact does not change defendant's obligations in this case.

Defendant's reliance on *In re Timothy N.* (2013) 216 Cal.App.4th 725 (*Timothy N.*) and *People v. Gross* (2015) 238 Cal.App.4th 1313 (*Gross*) to support a contrary conclusion is unavailing. Both those cases involve interpretation of different statutory provisions and are materially distinguishable.

In *Timothy N.*, *supra*, 216 Cal.App.4th 725, Timothy, a juvenile, reached an agreement with the prosecutor that he would plead guilty to one count of burglary in exchange for the dismissal of five other counts and the promise that if Timothy “‘successfully complete[d] probation’ the prosecutor would dismiss the residential burglary allegation and reduce the charge to a misdemeanor.” (*Id.* at p. 727.) The parties did not define the phrase “‘successfully complete probation.’” The trial court found that Timothy had fulfilled all the conditions of probation except that he had not paid the full amount of victim restitution. The trial court terminated jurisdiction finding Timothy “‘complied with all the terms and conditions and he has terminated probation entirely successfully.’” (*Id.* at pp. 727-728.) However, when Timothy moved to enforce the plea agreement, the trial court denied the motion on the ground that he had not successfully completed probation because the restitution had not been fully paid. (*Id.* at p. 728.)

The appellate court reversed. After noting that the phrase “‘successfully complete probation,’” “‘appears to have no standard meaning and is ambiguous,” the court reasoned, “‘resolving the ambiguity of the phrase ‘successfully complete probation’ in Timothy’s favor, as we must, we conclude that Timothy would have reasonably believed that he would be deemed to have ‘successfully complete[d] probation’ if he completed

his term of probation without having engaged in conduct that provided a basis for the court to revoke his probation. Timothy clearly met this standard.” (*Timothy N.*, *supra*, 216 Cal.App.4th at p. 735.)

*Timothy N.* does not assist defendant. *Timothy N.* interpreted only the language and intent of a single plea agreement with conditions distinguishable from the requirements of section 1203.4. As such, the holding in *Timothy N.* is inapposite and limited to its facts.

Similarly, *Gross*, *supra*, 238 Cal.App.4th 1313 does not assist defendant. In that case, after analyzing a victim’s right to restitution, the Court of Appeal held that defendant maintained an obligation to pay victim restitution even after receiving a dismissal of charges under Welfare and Institutions Code former section 3200. (*Gross*, at pp. 1318-1322.) The court noted that dismissal under that statute had virtually the same “force and effect” as a dismissal under Penal Code section 1203.4. (*Id.* at p. 1315.) However, the requirements for obtaining relief under Welfare and Institutions Code former section 3200 are different than those of Penal Code section 1203.4. While section 1203.4 requires that a defendant who has not received early discharge fulfill the conditions of probation for the entire period of probation, Welfare and Institutions Code former section 3200 provided relief for any defendant who successfully completed a commitment to the California Rehabilitation Center. (*Gross*, at p. 1319.)

The *Gross* court explained, “Because this case involves a dismissal under Welfare and Institutions Code former section 3200, rather than a dismissal under Penal Code section 1203.4, we have no occasion to consider whether it would even be lawful to dismiss an accusation or information under section 1203.4 when an order for direct victim restitution remained unsatisfied. Certainly if a trial court had exercised its discretion to make direct victim restitution a condition of probation (see § 1203.1, subd. (b)), dismissal would not be lawful under the first option in subdivision (a)(1) of section 1203.4 because the defendant would not have ‘fulfilled the conditions of probation for the entire period of probation’ (§ 1203.4, subd. (a)(1)). . . . For our purposes, it is sufficient to conclude that a dismissal otherwise lawfully made under Welfare and Institutions Code former section 3200 or [Penal Code] section 1203.4 does not operate to relieve the defendant from the obligation to make direct victim restitution.” (*Gross, supra*, 238 Cal.App.4th at p. 1322, fn. 6, italics omitted.) Accordingly, *Gross* does not support defendant’s position or provide guidance on the question of whether a defendant who has failed to pay in full court-ordered victim restitution has fulfilled the conditions of his or her probation for purposes of section 1203.4. (See *People v. Knoller* (2007) 41 Cal.4th 139, 154-155 [“ ‘An opinion is not authority for propositions not considered’ ”].)

Based on the foregoing, we find the trial court did not err in denying defendant’s section 1203.4 motion to dismiss.

IV

DISPOSITION

The San Bernardino County Superior Court clerk is directed to correct Form CR-110 and the June 15, 2012 probation order to accurately reflect the trial court's oral pronouncement of judgment of victim restitution in favor of AHLI in the amount of \$247,412.91. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON  
J.

We concur:

MILLER  
Acting P. J.

SLOUGH  
J.